

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL ALONZO HARRIS,	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 09-150
	)	Judge Nora Barry Fischer
LAW OFFICE OF MICHAEL MOSER	)	Magistrate Judge Lisa Pupo Lenihan
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

**I. Background and Analysis**

This case was initiated by the February 5, 2009 filing of a Motion for Leave to Proceed *In Forma Pauperis* which was granted by this Court on February 23.

Congress has required that this Court review any Complaint filed by persons proceeding *in forma pauperis* and to dismiss any action that fails to state a claim on which relief may be granted. See 28 U.S.C. § 1915(e)(2).

Plaintiff's pleading in this action asserts that Defendant, Attorney Michael Moser, failed to institute a lawsuit on his behalf for a personal injury lawsuit and allowed the applicable statute of limitations to expire. Basically, Plaintiff is pleading a legal malpractice action. Because the complaint filed by Plaintiff in this action does not state any federal claim for relief, it should be dismissed pursuant to this statute and this Court should decline to exercise

supplemental jurisdiction over any state law claim.<sup>1</sup> Cf. Banks v. Pittsburgh Tribune Review, 2007 WL 1314617 (W.D. Pa. May 4, 2007) (*sua sponte* dismissal of IFP complaint for failure to state a federal claim, and declining to exercise supplemental jurisdiction).

## **II. Recommendation**

For the reasons set forth above, it is respectfully recommended that this case be dismissed and the Court decline to exercise supplemental jurisdiction over any state law claim.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrate Judges, the parties are allowed ten (10) days from the date of service to file objections to this report and recommendation. Any party opposing the objections shall have ten (10) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.



LISA PUPO LENIHAN  
United States Magistrate Judge

Dated: February 27, 2009

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1. The Court notes that to the extent Plaintiff may have an underlying state law claim for contractual damages with regard to legal services, such action may be pursued in State Court.